1303 J Street, Suite 600, Sacramento, CA 95814-2939 T. 916.441.7377 F. 916.441.5756

September 23, 2005

Federal Deposit Insurance Corporation – SF Regional Office
Regional Director John F. Carter
25 Jessie Street at Ecker Square, Suite 2300
San Francisco, CA 94105
Attention: Comments/Legal ESS

Re: Wal-Mart Application for Deposit Insurance

Dear Mr. Carter:

The California Bankers Association ("CBA") is writing in response to the application by Wal-Mart Stores, Inc. ("Wal-Mart") to the FDIC for federal deposit insurance for a proposed industrial bank. CBA is a non-profit professional organization established in 1891 that represents FDIC-insured financial institutions in the state of California. The application, made through Wal-Mart's wholly-owned subsidiary, Broadstreet Financial Services, Inc., proposes to establish Wal-Mart Bank based in Salt Lake City, Utah.

CBA normally does not comment on these kinds of applications by individual entities. We emphasize that CBA supports the industrial loan charter and recognizes the role that industrial loan companies play in providing financial services. Therefore, our comments should not be construed as general opposition to industrial loan companies. However, we believe that this particular application by the largest retailer in the world raises policy issues that the FDIC should consider beyond those normally addressed in its approval process. It was only in 1999 with the passage of the Gramm-Leach-Bliley Act ("GLBA") that Congress, after over a decade of deliberations, brought down the depression-era legal barrier between banking on the one hand, and insurance and securities on the other. One of the key policy considerations facing Congress at the time was how to ensure safe and sound banking practices, which concern precipitated raising the barrier in the 1930s, while responding to the dramatic market integration of financial services at the end of the 20th century.

While GLBA now allows banking, securities, and insurance operations to be provided through an integrated family of companies, the landmark statute also established a supervisory structure to ensure safety and soundness, the centerpiece of which is the creation of the financial holding company subject to Federal Reserve Board supervision, together with comprehensive functional regulation by other state and federal agencies. It is important to note that Congress, while establishing the legal framework to permit the assimilation of financial services, at the

same time maintained and indeed strengthened the barrier between banking and commerce. Under GLBA, affiliations permitted under a financial holding company are limited to activities that are financial in nature. Moreover, Congress eliminated the unitary thrift holding company exception (except for grandfathered entities) that had permitted some degree of affiliation between commercial companies and savings associations.

The rationale for limiting bank affiliations to financial services is clear. The banking, securities, and insurance sectors are highly regulated, and GLBA strengthens governmental supervision further through the financial holding company. The resulting efficiencies from integration benefit consumers but without jeopardizing safety and soundness. On the other hand, affiliation with commercial companies could expose banks and the deposit insurance funds to the business pressures of the entire panoply of commercial enterprises that are not highly regulated, if at all. Just a cursory look at the bankruptcy rate of commercial businesses (approximately 450,000 business filings in 2004, according to the U.S. Bankruptcy Court) compared to the small number of bank failures underscores this reality.

Forward now to 2005, and Congress' intent to maintain the barrier between banking and commerce continues. That intent was recently reaffirmed in legislative language introduced in the House of Representatives. A provision of H.R. 1224, the "Business Checking Freedom Act of 2005," that passed the House by a large majority, would prohibit industrial banks that are controlled by a commercial entity from offering interest-bearing business checking accounts. Also, H.R. 3505, the "Financial Services Regulatory Relief Act of 2005" would prohibit interstate branching by commercially controlled industrial banks, such as the proposed Wal-Mart Bank.

Just this month, the Government Accountability Office issued a report to Rep. James Leach titled, "Industrial Loan Corporations, Recent Asset Growth and Commercial Interest Highlight Differences in Regulatory Authority." The conclusion of the report is that while the FDIC has taken important steps to identify and manage the additional risks posed by commercially-controlled ILCs, "without the aid of consolidated supervision, [the agency] cannot effectively assess all the risks to a depository institution posed by the holding company and affiliates of an ILC. . . . [F]rom a regulatory standpoint, ILCs in a holding company structure may pose more risk of loss to the Fund than other types of insured depository institutions in a holding company structure." We believe that these concerns are only magnified with respect to this application by a commercial entity that is as large and complex as Wal-Mart.

CBA believes it is very appropriate for the FDIC to take into consideration these policy concerns when reviewing the Wal-Mart application, and to place all necessary and appropriate conditions to allay safety and soundness concerns. From published sources, Wal-Mart is reported to have limited purposes for establishing an industrial bank. Therefore, one of those conditions should be that any change in that limited purpose requires advance approval by the FDIC. It would also be appropriate for the FDIC to ensure that any activities that Wal-Mart seeks to engage in are consistent with the substance of the legislative language introduced in Congress.

Thank you for your consideration of our comments. If you have any questions, please contact the undersigned.

Sincerely,

Leland Chan
General Counsel